

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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TRUSTEES OF THE MOSAIC AND TERRAZZO
WELFARE, PENSION, ANNUITY AND
VACATION FUNDS, TRUSTEES OF THE
BRICKLAYERS & TROWEL TRADES
INTERNATIONAL PENSION FUND, and
TRUSTEES OF THE INTERNATIONAL
MASONRY INSTITUTE,

NOT FOR PUBLICATION
MEMORANDUM & ORDER
12-CV-03875 (CBA) (MDG)

Plaintiffs,

- against -

RPT NEW YORK L.L.C.,

Defendant.

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AMON, Chief United States District Judge.

On August 3, 2012, plaintiffs, the Trustees of the Mosaic and Terazzo Welfare, Pension, Annuity, and Vacation Funds (the “Local Funds”), the Bricklayers & Trowel Trades International Pension Fund, and the International Masonry Institute (the “International Funds”), commenced this action against defendant RPT New York L.L.C. Plaintiffs filed suit pursuant to the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 *et seq.*, as amended by the Multiemployer Pension Plan Amendment Act of 1980, 29 U.S.C. § 1381 *et seq.*, to recover unpaid benefit contributions, as well as interest on the contributions, liquidated damages, attorneys’ fees and other costs. On October 4, 2012, the Clerk of Court noted the default of RPT, who had failed to appear in or otherwise defend this action, and plaintiffs subsequently filed the instant motion for default judgment. (DE #10.) The Court referred the matter to Magistrate Judge Marilyn D. Go who issued a Report and Recommendation (“R&R”) on September 12, 2013, recommending that the Court: (1) deny damages for unpaid contributions to the Promotional Fund, the Building Fund, the Defense Fund, the Local PAC, the BAC/PAC and the Union because plaintiffs had failed to demonstrate that they have standing to sue on behalf of

those entities; and (2) enter judgment against RPT in the total amount of \$134,662.96, consisting of: (a) \$81,834.56 in unpaid contributions; (b) \$33,237.65 in prejudgment interest through September 30, 2013 and thereafter at a rate of \$22.43 per day until entry of judgment; (c) \$16,144.75 in liquidated damages; (d) \$2,127.00 in attorneys' fees; (e) \$850.00 in audit fees; and (f) \$469.00 in costs. (DE #19.)

Neither party has objected to the R&R and the time for doing so has passed. When deciding whether to adopt a R&R, a district court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). To accept those portions of the R&R to which no timely objection has been made, "a district court need only satisfy itself that there is no clear error on the face of the record." Jarvis v. N. Am. Globex Fund, L.P., 823 F. Supp. 2d 161, 163 (E.D.N.Y. 2011) (internal quotation marks and citation omitted). The Court has reviewed the record and, finding no clear error, hereby adopts Magistrate Judge Go's R&R as the opinion of the Court.

Accordingly, the Court grants in large part plaintiffs' motion for default judgment. The Clerk of Court is directed to enter judgment against RPT in the total amount of \$134,662.96, consisting of: (1) \$81,834.56 in unpaid contributions; (2) \$33,237.65 in prejudgment interest through September 30, 2013 and thereafter at a rate of \$22.43 per day until entry of judgment; (3) \$16,144.75 in liquidated damages; (4) \$2,127.00 in attorneys' fees; (5) \$850.00 in audit fees; and (6) \$469.00 in costs. The Clerk of Court is then directed to terminate all pending motions and close the case.

SO ORDERED.

Dated: Brooklyn, New York
September 30, 2013

/s/
Carol Bagley Amon
Chief United States District Judge